

Suggestions for Avoiding Roommate Disputes

Last Updated Friday, 14 July 2006

This memorandum has been prepared and printed by the city of Boulder Community Mediation Service.

A large number of disputes involve roommate problems. Some of the issues of sharing a dwelling place have been discussed in the Landlord/Tenant Handbook, under "Roommate Problems," "Joint and Several Liability", and "Security Deposits."

The following are a series of recommendations to help prevent roommate disputes. They are suggestions based on past experience and common sense. They are not actions mandated by law, nor are they intended to be a substitute for legal advice.

Many roommates enter into their living-together relationships with high hopes and positive expectations. Especially where roommates are also friends, they believe that everything will go smoothly and that all they need is "an understanding" between them. However, people change; circumstances change; best friends do not always make the best roommates.

It is wise to treat the mechanics of house sharing as a business relationship in order to protect the personal relationships.

FORMING A NEW HOUSEHOLD

Often the basis of disputes is a lack of good communication or a mismatch of expectations between roommates. To minimize misconceptions and false expectations, we recommend:

A. That potential roommates thoroughly discuss with each other the needs, expectations, and general ground rules that they wish to establish in a shared household prior to moving in together and signing a lease. This applies equally to a situation where a new roommate moves into an established household.

B. That roommates draw up and sign a roommate agreement which spells out their rights and obligations to each other, including, for example:

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Date of agreement.

- Names of roommates.
- Address of property.
- Portion of rent and utilities to be paid by each roommate.
- Total amount of security deposit paid and portion of that deposit paid by each roommate.
- Agreement that each roommate will pay for damages caused by him/her or his/her guests.
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Agreement that each roommate, if he/she needs to move out prior to the end of the lease term, will continue to pay his/her share of the rent for a certain period of time unless he/she obtains the permission of the landlord and replaces himself/herself with another tenant acceptable to the other roommates.

- Who will find, interview, and decide on new roommate.
- Agreement that each roommate will pay a specific share of the cost of any repairs, improvements or other costs incurred in the operations of the household or due under the lease.
- Any other agreements that the roommates think are appropriate.
- Signatures of all roommates.

The roommate agreement is just that: an agreement among the roommates. It is not binding upon the landlord. The lease is the agreement between tenants who signed the lease and the landlord. Tenants need to pay particular attention to the Joint and Several Liability which they have to the landlord, as explained in the Landlord/Tenant Handbook.

C. If problems do arise, and it is almost inevitable that some will, roommates should talk to each other and try to work them out when they occur rather than wait until problems build up into unresolvable resentments.

CHANGING ROOMMATES

Perhaps the most common problem that arises occurs when one roommate in a household needs to move out. When a roommate leaves before the end of a lease term, great care is needed to minimize confusion and to avoid incurring additional liabilities.

Any tenant who has signed the lease is responsible for the rent for the entire duration of the lease whether he/she lives in the premises or not. If more than one person has signed the lease, each person individually and all persons collectively is/are responsible for paying the rent in full. If one roommate moves out and does not pay his/her share of the rent, the other roommates must pay the rent in full, or they will be subject to eviction for nonpayment of rent. Those roommates must then look to the nonpaying roommate for the rent they paid on his/her behalf.

The following are a list of procedures for departing roommates that will help prevent problems. A roommate who is planning to move before the end of the lease term should:

A. Talk to the other roommates about his/her intention to move.

B. Read the lease to see how the lease will affect his/her decision:

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Is subletting/assignment prohibited? Even if the lease prohibits subletting, the landlord cannot unreasonably refuse to sublet.

- Is the permission of the landlord required before the tenant can sublet or assign? Does permission have to be in writing?

- Are there any special conditions that must be met?

- Is there a restriction that only those persons named in the lease can occupy the premises?

C. Discuss with the roommates how to arrange for a replacement roommate:

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What type of person would be acceptable to the other roommates (reasonable criteria)?

- Who will arrange and pay for advertising?

- Who will receive calls and show the unit?

- Agreement by departing roommate to continue paying rent until new roommate is found and begins tenancy.

D. Contact the landlord to find out how the landlord would like to handle:

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Landlord's approval of new tenant.

- New tenant's relationship to the lease.

- Old and new tenants' security deposits.

NOTE: Even if the lease does not require the landlord's permission to sublet, it is to the tenants benefit to communicate and work things out with the landlord.

There are many versions of subletting/assignment/replacement used in Boulder. Landlords and tenants may wish to negotiate with each other to determine which version will work for them. Below are a few options. The landlord is not obligated to accept any of these options but again may not unreasonably refuse.

OPTION A: The landlord terminates the old lease. A new lease is signed by the remaining tenants and the new tenant, along with the landlord. The departing tenant has no further liability for rent. The landlord returns the security deposit, less damages, to the old tenants. The landlord collects a new deposit from the remaining tenants and the new tenant. This alternative may be the clearest arrangement. However, few landlords do this, as it involves substantial work on the landlord's part.

OPTION B: The landlord amends the existing lease, adding the new tenant's name and removing the departing tenant's name. The departing tenant has no further liability for rent. The new tenant pays the departing tenant an amount of money equal to the departing tenant's security deposit. The new tenant now assumes all liabilities of the departed tenant, including liability for previous damages. The landlord will then owe any security deposit refund to the new, rather than the departed, roommate. This transaction should be documented in writing in an agreement signed by old roommates, the new roommate, and the landlord.

OPTION C: The departing tenant sublets to the new tenant. The departing tenant remains on the lease and is liable for all lease obligations for the remainder of the lease term. Below are some examples of ways in which this option could look for the involved parties.

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The new tenant signs a sublease agreement and pays the deposit to the original departing tenant who retains the deposit. In this case the landlord retains the original tenant's security deposit. When this option is taken the original tenant remains liable for all rent and damages until the end of the lease term. If the new tenant does not pay the rent, the other roommates and the landlord can look to the original tenant for the payment. Due to "Joint and Several Liability", the landlord can also look to the other residing tenants for the balance of the monies owed. At the end of the lease term the landlord returns the deposits, less any damages, to the original tenant and the original tenant returns the deposit, less any damages, to the new

tenant. This may prove to be a difficult option since the original tenant may have left town, making collection of rent or other obligations difficult for the new tenant, the remaining roommates or the landlord.

- The new tenant pays the deposit to the landlord and the landlord retains both deposits until the end of the lease term.
- The new tenant pays his/her deposit to the landlord and the landlord returns the deposit he/she has to the original tenant.

OPTION D: A hybrid or combination of the above options and/or other agreements worked out between the parties (e.g. departing tenant subsidizing the new tenants rent, the departing tenant pays a fee to the remaining tenants with the agreement that they will secure a new roommate.)

It is important to remember that when you are involved in a "Joint and Several Liability" relationship and monies are withheld from your deposit the landlord does not have to determine who is the responsible party for the monies owed. Therefore, when tenants are being replaced it is in the best interest for everyone to do a walk-through of the unit to ascertain any damages before the change in tenancy takes place.

It is wise to investigate these options with the landlord at the point of signing the lease and then to specify in the roommate agreement exactly which procedure will be used if a roommate needs to move.

Note that in these alternatives, the departing tenant may not substitute his/her security deposit for any rent payment, in the absence of an agreement allowing him/her to do so.

MEDIATION

Mediation is often a good way to resolve roommate disputes if discussions fail. Where there has been a turnover of roommates, it may be difficult to sort out legally who is responsible to whom for what if an agreement was not made in advance. Mediation provides an opportunity for old and new roommates to identify issues and discover what solution might work for them. It is important to be sure that all involved parties participate in the mediation process. Reaching agreement may be impossible when some of the individuals who are integral to the dispute are not available. The City of Boulder Community Mediation Service is available at (303) 441-4364.

Sample Roommate Agreement:

[Roommate Agreement \(.doc\)](#)

[Roommate agreement \(.pdf\)](#)